

U.S. District Court District of Kansas Questions and Answers



Q What is a Pro Se litigant?

A If you cannot find an attorney to represent you, you can pursue your lawsuit by appearing without representation or pro se, a Latin phrase meaning “for oneself.” If you file a lawsuit and represent yourself, you are the “plaintiff.” If someone sues you, you are the “defendant.” In either case you can appear *pro se*.

Keep in mind that as a pro se litigant, you can only represent yourself and only present your claims and defenses. Under the law, you cannot speak for another person, a company, or other entity such as a club or association that includes other individuals.

When you appear pro se, you must follow the same rules and procedures as licensed attorneys who practice in this court. Generally, judges hold pro se litigants to the same standards of professional responsibility as lawyers.

Q If you decide to represent yourself, what are some basic things to remember?

A It is important that you fully understand your obligation to prosecute or defend your case once it is filed:

First, you should consider the possibility that you may lose. In that instance *the other side may ask that you be ordered by the court to pay their attorneys’ fees and costs*.

- ♦ You are required to do your best to present your lawsuit to the court or defend your lawsuit. Unless and until you hire an attorney to represent you, it is your responsibility to do everything necessary to prepare your case for trial. This includes, but is not limited to, responding to discovery requests and motions from the other side and responding to court orders. You also must be prepared to present your case in court in front of the judge and others.
- ♦ Do not expect the court to explain or instruct you about procedures to follow for prosecuting or defending your lawsuit. If you do not follow established procedures, your case can be dismissed for failure to prosecute. If you do not respond to certain motions or orders, then certain facts may be treated as admitted. If you miss a deadline, the court can enter an order without waiting for your response.

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- ♦ If you file anything with the court, you must give a copy to the attorney who represents the other parties, if the other parties have no attorney, you must give the copies to the other parties. Likewise, the other side must give you copies of anything which it files with the court.
 - ♦ Sometimes, the parties will attach a certificate of service indicating that the clerk of court has been served with copies of pleadings or motions. This is not necessary. It is your responsibility, not the clerk's office, to serve the other parties.
 - ♦ You must keep the court and other parties advised of any change in your address or telephone number. If you do not do so immediately, the court may dismiss your case.

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How long do I have to file my complaint (statute of limitations)?

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The time limit for filing a lawsuit depends on the types of claims raised in the lawsuit. This issue is one of federal and state law and the clerk's office cannot give you legal advice on the issue or tell you how long you may have to file a lawsuit. To find out how long you have to file, you must do legal research. Many federal laws specifically state the statute of limitations period. Often, if the federal law does not include a statute of limitations for the most similar type of claim, you must look to the statute of limitations under state law. Certain organizations provide legal aid or assistance to answer your questions. The clerk's office cannot recommend any specific organization, but does maintain a list of organizations that have indicated a willingness to assist and may be able to help you (see Pro Se Guide, pg 23).

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I have been named as a defendant in a case, but cannot find an attorney. What do I do?

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As stated on the summons you received when the complaint was served to you, you have 20 days in which to file an Answer. An Answer is a written response addressing the claims made in the complaint. This must be filed before the 20 days, or the court may enter judgment against you. You may also file a Motion for Appointment of Counsel (the form is included in this packet) and the accompanying Affidavit of Financial Status requesting the court assign an attorney to your case. *It is important to note that specific criteria (see Pro Se Guide, pg 18) must be met in order for the court to assign an attorney to your case.* Another option is to contact local legal aid resources (see Pro Se Guide, pg 23).

Q My corporation has been sued. Can I file papers in court on behalf of the corporation?

A No. Only people can appear pro se. A corporation is not a "person" for this purpose. In other words, a person who is not an attorney may represent himself or herself, but may not represent a corporation, even if the person is the sole owner of the corporation. The corporation must be represented by a lawyer. You may appear in court with the lawyer for the corporation, but only the lawyer can "speak" for the corporation in court.

Q What kind of cases belong in federal court (subject matter jurisdiction)?

A Federal jurisdiction is one of the most, if not the most important, issue to address before filing a lawsuit. Federal Court is a court of limited jurisdiction. All sorts of cases may be filed in state court, but only two types of cases may be filed in federal court: (1) federal questions cases; and (2) diversity of citizenship cases. A more detailed explanation of these two types of case may be found on page 2 in the Pro Se Guide. If you do not meet these special requirements then the federal court does not have the "jurisdiction" to consider your lawsuit and the court will dismiss your lawsuit without considering your claims.

Q Where can I file my lawsuit and file other court papers?

A The clerk's office has three locations in the District of Kansas: Kansas City, Topeka, and Wichita. Pleadings for any District of Kansas case may be filed at any of these offices. For a list of addresses and contact information, see page 11 in the Pro Se Guide.

Q Can I speak to the judge about my case or have someone in the clerk's office speak to the judge for me?

A No. Except for proceedings at court, all communication to the judge must be done in writing. The clerk's office will not speak to the judge for you.

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Will the judge answer my letter?

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Generally, the court will not respond to letters. If you want the court to issue an order, or provide guidance on procedural issues, you should file a motion which explains your request to the court.

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I don't have a computer or a typewriter, can I write my papers in long-hand?

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Yes. If the papers are legible, they may be handwritten. Remember, you will need copies to serve on the other parties.

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Can I file my papers electronically?

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Pro se litigants may submit filings by email to the main clerk's office email address at any of three courthouses in the District of Kansas (see Pro Se Guide, page 12). A scanned copy of your document may be submitted in pdf. format, or it may be submitted in pdf. format with an "s/Your Name" substituted for a handwritten signature. In this instance however, you will be required to file an original copy of your document, with *your original ink signature*, with the clerk within three business days.

Note: documents will be filed as of the date they are received electronically.

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Will the judge accept faxes? Will the clerk's office?

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Judge's chambers will not accept faxes without prior approval and a fax to a judge is not a filing with the clerk's office. The clerk's office will, however, accept documents for filing by fax at any of three courthouses in the District of Kansas (see Pro Se Guide, page 11-12)

Note: documents will be filed as of the date they are received by fax.

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Why is my case "undergoing judicial review" and what does that mean?

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To file a lawsuit you must pay a filing fee \$350.00. You can ask the court to waive the filing fee however, by filing the form "Motion to Proceed Without Prepayment of Fees. Before it decides, the court must look at your case to see if it is frivolous or malicious, fails to state a claim for relief, or names defendants who are immune from suit. In addition, the court must look at whether it has jurisdiction over your case. While the court is looking at these issues, your case is undergoing judicial review. This review can take anywhere from a few weeks to a few months, depending on the court's workload at any given time. Typically, cases are reviewed in the order in which they are filed.

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Who can serve my summons and complaint? How is it done?

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Anyone over the age of 18 years who is not a party to the lawsuit can serve the summons and complaint. Professional process servers, typically listed in the telephone book, may be hired to serve the summons and complaint. Fees and costs vary with each server. A cost-savings alternative is to have a trusted family member or friend who is over 18 years old serve your summons and complaint. If your application to waive the filing fee has been granted, the clerk's office will serve your complaint and summons through the United States Marshal Service, free of charge. *Summons may not be issued or served however, until the filing fee issue has been resolved.*

If you are required to make service of the summons and complaint on your own behalf, U.S. Certified Mail is also an option. Simply return a copy of the summons along with the green certified mail card signed by the defendant (or person authorized to accept service on his/her behalf) to the clerk's office for filing. The summons and green card will be filed.

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When must I serve my complaint?

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You have 120 days from the date of filing to serve your complaint. If the court lets you proceed without prepayment of fees, you have 120 days from the date when the court enters that order.

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How long will it take to go to trial?

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We know that your case is very important to you, but very few civil cases in federal court actually go to trial. Almost all cases, whether they are proceeding with or without an attorney, are settled or decided by a judge's order before trial. If the case survives a defendant's motion to dismiss or motion for summary judgment and the case is not complicated and does not require extended discovery, the case may go to trial in less than a year, depending upon the judge's schedule and priority of other cases.

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What is a magistrate judge and why has my case been referred to one?

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All civil cases in the District of Kansas are assigned to one United States District Judge and one United States Magistrate Judge. A district judge may refer the case to the magistrate judge to handle during different parts of the case. For instance, a district judge may refer the case to the magistrate judge to handle all issues relating to discovery (for example identification and exchange of preliminary information, documents, exhibits, or witnesses). Many times, a district judge will refer the case to the magistrate judge for a report and recommendation on dispositive motions, such as motions to dismiss and motions for summary judgment. The magistrate judge will review the motion and issue a recommendation which advises the district judge what should happen with the motion. The parties then have ten days to object in writing to the recommendation. After the district judge considers the recommendation and any objections, the district judge will issue a decision. This decision is the final decision by the district court. A party who disagrees with the district court's decision may be able to appeal it to the Tenth Circuit Court of Appeals at the end of the case.

Parties may consent to have the entire case handled by the magistrate judge. In such cases, the district judge will take no part in the case.

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What are motions?

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Either party, the plaintiff or the defendant, may request that the court take specific action related to the case. To do so, the party prepares a formal request which is called a motion. The party signs the motion, files it (with a certificate of service) and sends a copy to the other parties. The other parties may oppose the motion through an objection which states why the court should deny rather than grant the motion. Any objection must be signed, filed and served on the other parties.

The district or magistrate judge normally rules on motions by issuing a written order. That order may grant the motion, deny the motion or partially grant or deny. The court generally does not schedule hearings for the parties to argue the motion or objections.

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How do I get copies of what opposing parties file?

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Any party who files a pleading or document must serve a copy served on all other parties in the case, or their counsel, and also file a certificate of such service.

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What must a certificate of service show?

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Any pleading, motion or other paper which is filed with the court must include a certificate of service which states the name and address of each attorney and/or party on who is receiving a copy of the document and the date and method of service (typically first class U.S. Mail).

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What is the role of the Chief Judge?

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The Chief Judge is not the “boss” of the other judges. The Chief Judge is primarily responsible for the court administration. The Chief Judge does not manage or discipline the other judges or enter rulings on their cases.

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How do I file a complaint against a judge?

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If you have a complaint about the behavior of a federal judge, which is not related to the judge’s decision in a particular case, go to the court’s web site at www.ksd.uscourts.gov, click on “Judicial Misconduct and Disability” and read the 10th Circuit Rules Governing Complaints of Judicial Misconduct and Disability. You may also get a copy from the clerk’s office. These rules explain what may be complained about, who may be complained about, where to file a complaint, and how the complaint will be processed.

Almost all judicial complaints are dismissed because they do not follow the law about such complaints. The law says that complaints about judges, decisions and complaints with no evidence to support them must be dismissed. If you are a party in a case and believe the judge made a wrong decision—even a very wrong decision—you may not use this procedure to complain about the decision. A more proper method to complain about a judicial opinion is to appeal that decision to the Court of Appeals at the end of your case.